(2) Lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);
(3) Bone cancer;
(4) Renal cancers;
(5) The following diseases, provided onset was at least 5 years after first exposure:
(i) Multiple myeloma;
(ii) Lymphomas (other than Hodgkin's disease);
(iii) Primary cancer of the:
(A) Thyroid;
(B) Male or female breast;
(C) Esophagus;
(D) Stomach;
(E) Pharynx;
(F) Small intestine;
(G) Pancreas;
(H) Bile ducts;
(I) Gall bladder;
(J) Salivary gland;
(K) Urinary bladder;
(L) Brain;
(M) Colon;
(N) Ovary;
(O) Liver (except if cirrhosis or hepatitis B is indicated).
(6) The specified diseases designated in this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.
(o) Survivor means a surviving spouse, child, parent, grandchild and grandparent of a deceased covered employee as defined in EEOICPA.

[69 FR 30780, May 28, 2004, as amended at 70 FR 75952, Dec. 22, 2005; 72 FR 37459, July, 10, 2007]

Subpart C—Procedures for Adding Classes of Employees to the Cohort

§ 83.6 Overview of the procedures in this part.

The procedures in this part specify who may petition to add a class of employees to the Cohort, the requirements for such a petition, how a petition will be selected for evaluation by NIOSH and for the advice of the Board, and the process NIOSH, the Board, and the Secretary will use to consider a petition, leading to the Secretary's final determination to accept or deny adding a class to the Cohort. The rule provides for petitions in two distinct circumstances. One circumstance is when NIOSH has attempted to conduct a dose reconstruction for a cancer claimant, under 42 CFR part 82, and finds that the dose reconstruction cannot be completed, because there is insufficient information to estimate the radiation doses of the claimant with sufficient accuracy. The second circumstance includes all other possibilities. For example, a petition may be submitted representing a class of employees whose members have yet to file claims under EEOICPA, or even have yet to be diagnosed with cancer. As required by EEOICPA (42 U.S.C. 7384l(14)(c)(ii)), the procedures in this part include formal notice to Congress of any decision by the Secretary to add a class to the Cohort, and the opportunity for Congress to expedite or change the outcome of the decision within 180 days.

§ 83.7 Who can submit a petition on behalf of a class of employees?

A petitioner or petitioners for a petition must be one or more, up to a maximum of three, of the following:
(a) One or more DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees, or their survivors; or
(b) One or more labor organizations representing or formerly having represented DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees; or
(c) One or more individuals or entities authorized in writing by one or more DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees, or their survivors.

§ 83.8 How is a petition submitted?

The petitioner(s) must send a petition in writing to NIOSH. A petition must provide identifying and contact information on the petitioner(s) and information to justify the petition, as specified under § 83.9. Detailed instructions for preparing and submitting a petition, including an optional petition form, are available from NIOSH through direct request (1–800–35–

NIOSH) or on the Internet at *www.cdc.gov/niosh/ocas*.

§ 83.9 What information must a petition include?

(a) All petitions must provide identifying and contact information on the petitioner(s). The information required to justify a petition differs, depending on the basis of the petition. If the petition is by a claimant in response to a finding by NIOSH that the dose reconstruction for the claimant cannot be completed, then the petition must provide only the justification specified under paragraph (b) of this section. All other petitions must provide only the information specified under paragraph (c) of this section. The informational requirements for petitions are also summarized in Table 1 at the end of this section.

(b) The petition must notify NIOSH that the claimant is petitioning on the basis that NIOSH found, under 42 CFR 82.12, that the dose reconstruction for the claimant could not be completed due to insufficient records and information.

(c) The petition must include the following:

(1) A proposed class definition[1] specifying:

(i) The DOE facility or AWE facility[2] at which the class worked;

(ii) The location or locations at the facility covered by the petition (e.g., building, technical area);

(iii) The job titles and/or job duties of the class members;

(iv) The period of employment relevant to the petition;

(v) Identification of any exposure incident that was unmonitored, unrecorded, or inadequately monitored or recorded, if such incident comprises the basis of the petition; and

(2) A description of the petitioner's (petitioners'') basis for believing records and information available are inadequate to estimate the radiation doses incurred by members of the proposed class of employees with sufficient accuracy. This description must include one of the following elements:

(i) Documentation or statements provided by affidavit indicating that radiation exposures and doses to members of the proposed class were not monitored, either through personal or area monitoring; or

(ii) Documentation or statements provided by affidavit indicating that radiation monitoring records for members of the proposed class have been lost, falsified, or destroyed; or

(iii) A report from a health physicist or other individual with expertise in dose reconstruction documenting the limitations of existing DOE or AWE records on radiation exposures at the facility, as relevant to the petition. This report should specify the basis for believing these documented limitations might prevent the completion of dose reconstructions for members of the class under 42 CFR part 82 and related NIOSH technical implementation guidelines; or

(iv) A scientific or technical report, published or issued by a government agency of the Executive Branch of government or the General Accounting Office, the Nuclear Regulatory Commission, or the Defense Nuclear Facilities Safety Board, or published in a peer-reviewed journal, that identifies dosimetry and related information that are unavailable (due to either a lack of monitoring or the destruction or loss of records) for estimating the radiation doses of employees covered by the petition.

(3) If the petition is based on an exposure incident as described under paragraph (c)(1)(v) of this section, the petitioner(s) might be required to provide evidence that the incident occurred, but only if NIOSH is unable to obtain records or confirmation of the occurrence of such an incident from sources independent of the petitioner(s). Such evidence would not be required at the time the petition is submitted and the

[1] HHS will determine the final class definition(s) for each petition (see § 83.16).

[2] Depending on the factual circumstances present, a facility that meets the definition of an AWE facility or DOE facility covered under EEOICPA (42 U.S.C. 7384l(5) and (12)) could, among other possibilities, constitute a single building or structure, including the grounds upon which it is located, or a site encompassing numerous buildings or structures, including the grounds upon which it is located.